INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	1
Statutes and Regulations involved	2
Statement	2
Argument	9
Conclusion	16
Appendix	18

CITATIONS

Cases:

Davis v. *United States*, 199 F. 2d 689	11
Falbo v. *United States*, 320 U.S. 549	10
Neal v. *United States*, No. 791, this Term	15
United States v. *Mansarage*, 178 F. 2d 812, certiorari denied, 339 U.S. 931	15
United States v. *Rubinstein*, 166 F. 2d 249, certiorari denied, 333 U.S. 868	14
Zieber v. *United States*, 161 F. 2d 90, certiorari denied, 333 U.S. 827	12

Statutes, Regulations and Executive Orders:

Universal Military Training and Service Act:

Section 6(g) [50 U.S.C. App., Supp. V, 456 (g)]	18
Section 6(g) [50 U.S.C. App., Supp. IV, 456(j)]	18
Section 12(a) [50 U.S.C. App., Supp. V, 462 (a)]	19
Section 16(g) [50 U.S.C. App., Supp. V, 466 (g)]	20

Regulations, Title 32, CFR (1949 ed.):

Section 1623.2	15, 21
Section 1624.1	21
Section 1624.2	22
Section 1626.12	11, 23
Section 1626.23	11, 23
Section 1626.25	23

Executive Order 10202, 16 F.R. 381	16
Executive Order 10292, 16 F.R. 9853	16

In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 792

KENNETH POWELL DAVIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 66-76) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on April 15, 1953 (R. 76). The petition for a writ of certiorari was filed on May 12, 1953. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether a registrant under the Selective

Service system, who specifically referred to but made no complaint concerning his hearing before the local board in appealing from the denial of his claim to exemption as a minister, may defend a criminal prosecution for failure to report for induction on the ground that he had not been accorded a fair hearing before the local board.

2. Whether a registrant who withdrew his claim of conscientious objection and stated that he was not a conscientious objector may, in the criminal prosecution, defend upon the ground that his withdrawal was induced by misrepresentations of an F.B.I. agent, where no notice of such alleged misrepresentation was given to the Selective Service boards.

STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the Universal Military Training and Service Act and regulations issued thereunder are set forth in the Appendix, *infra*, pp. 18-25.

STATEMENT

Petitioner seeks review of the judgment of the Court of Appeals for the Eighth Circuit (R. 76), affirming the judgment of the District Court for the Western District of Missouri adjudging petitioner guilty, upon the verdict of a jury (R. 59), and imposing a sentence of three years' imprisonment for violation of the Universal Military Training and Service Act by refusing, on March 23, 1951, to be inducted into the armed forces (R. 1-2).

The evidence may be summarized as follows:

On September 23, 1948, petitioner filed his classi-

fication questionnaire with his local Selective Service board (R. 6). He was then 20 years of age (R. 6). He filled in the blanks showing agricultural occupation at Norton, Kansas (R. 7), but not the blanks relating to the occupation of minister (R. 6) or the status of conscientious objector (R. 8). The questionnaire disclosed that he had received assistance in preparing the questionnaire from one Young (R. 9), who had been appointed to help registrants fill out questionnaires (R. 41). He was classified I-A on October 12, 1948, but after he went to the local board with his employer, he was reclassified II-C, because of agricultural occupation, for a period of one year ending November 29, 1949 (R. 9, 20, 24, 41). In September 1949, petitioner moved to Kansas City, Missouri, and worked in a wire factory 40 hours per week (R. 17, 31, 40-41).

Under date of February 10, 1950, petitioner wrote to the local board that he had received notice of the reopening of his case for reclassification and that he requested classification IV-D as "an ordained minister of Jehovah's witnesses" (R. 24-25). He stated that he was so recognized by his associates in the organization, cited extensive biblical authority for his type of ministry, and asserted that he regularly engaged in "house to house work using the Bible together with Bible study aids;" that at Service Meetings he had a "part in instructing other ministers in more effective ways of preaching and teaching as well as being instructed by others;" that he was enrolled in the organization's Theocratic Ministry School "which trains

ministers for public speaking," at which school he gave "Bible talks and receive[d] counsel and instruction in effective public speaking," and that he was conscientiously opposed to participation in "any form of military service" (R. 24-26).

On February 17, 1950, petitioner filed with the local board the special form for conscientious objectors (R. 15-19), reciting the beginning of his "training as a minister in company with the congregation of Jehovah's witnesses at Lenora, Kansas in the year 1947" (R. 16), and his continuance in "regular" Theocratic Ministry School "which is attended by all of Jehovah's witnesses" (R. 16) and in "house-to-house preaching, in street preaching with the aid of the 'Watchtower' and 'Awake!' magazines" (R. 16).

On February 20, 1950, petitioner was classified I-A by the local board (R. 9). On February 24, 1950, he filed an affidavit with the board, executed by eight "duly ordained ministers"—signing as "Company Servant," "Assistant Company Servant," "Bible-Study Servant," "Advertising Servant," "Territory Servant," "Accounts Servant," "Stock Servant," and "School Servant," respectively—stating, *inter alia,* that petitioner was a "duly ordained minister of Jehovah God who regularly preaches * * * to all the people he can reach by going from door-to-door, on the streets and other public places, and by repeatedly calling back on the interested ones * * *" (R. 23-24).

On March 14, 1950, petitioner requested an appearance before the local board, referring to the

previously filed affidavits of his "fellow ministers here showing they recognize me as a minister which is the requirement for proving ordination according to law" (R. 13-14). He was notified that he could appear before the board on May 23 (R. 14). On that date, following his personal appearance, he was again classified I-A (R. 9, 21) and on June 6, 1950, he filed a request for an appeal (R. 10-13), stating, *inter alia* (R. 10):

> On March 7, 1950 I received a I-A classification from your Board at which time I asked for a hearing to consider a reclassification to IV-D, due to the fact that I am actively engaged in preaching the Gospel of God's Kingdom as set forth in the Bible and in accordance with the command of Almighty God through Christ Jesus.
>
> At the hearing held May 23, 1950 I briefly stated my reasons for coming before them.
>
> Previous to the hearing I had filled out the special questionnaire for conscientious objectors as well as writing a letter to the board describing my ministerial activity. Beyond this I filed an affidavit * * *.
>
> Following the hearing I was sent another I-A classification dated May 25, 1950.

Petitioner continued, in this document, with extensive biblical authority for his type of ministry (R. 10-13). On August 29, he was continued in class I-A by the appeal board, and his file was forwarded to the Department of Justice (R. 9).

On September 20, 1950, petitioner was inter-

viewed by an F.B.I. agent and signed the following statement dated September 20, 1950 (R. 44-45):

> I, Kenneth Powell Davis, make the following free and voluntary statement to William H. Norton, known to me to be a Special Agent of the Federal Bureau of Investigation.
>
> I was born May 6, 1928, at Norton, Kansas. I now live at 3228 Wayne St., Kansas City, Missouri, and am employed at Atlas Wire Products Co., Kansas City, Mo. My Selective Service number is 14 52 28 19 Local Board #52, Norton, Kansas.
>
> I hereby state I am not a conscientious objector and withdraw my claim as such. In appealing from the classification of the Local Draft Board at Norton, Kansas I requested classification in IV-D as a minister and I rely solely on that claim and do not wish to be classified in classification IV-E or I-A-O. I understand that by signing this statement no further consideration will be given my conscientious objector claim.
>
> I have read this statement and it is true and correct.
>
> (S.) KENNETH POWELL DAVIS.
>
> Witness: (S.) William H. Norton, Special Agent, FBI, Kansas City, Mo.

The statement was forwarded by the United States Attorney to the appeal board (R. 46), which again classified petitioner I-A (R. 9).

On November 20, 1950, petitioner was ordered to report for induction. He requested transfer, and the file was forwarded to a Kansas City board. On

December 9, the local board received a notice of stay of induction and forwarded the file to State Headquarters at Topeka, Kansas (R. 9, 21). The State Director wrote to petitioner informing him that since there was no dissenting vote in the appeal board no appeal to the President of the United States was available (R. 26-27).

On February 15, 1951, a new order to report for induction was mailed to petitioner; on February 21, the board received a request for transfer for delivery and the papers were transferred to Kansas City (R. 9, 21). On March 6, 1951, petitioner was ordered to appear for induction (R. 27-28). On March 23, 1951, petitioner refused to take the step forward constituting the act of induction (R. 19, 28-29).

On September 27, 1951, petitioner was indicted for evasion and/or refusal of service in the armed forces (R. 1). At the trial, one Hiltebrand, overseer of the "society of ministers" in Kansas City which petitioner had joined in 1949, testified *inter alia* that he had discussed with petitioner the classification and informed him of the information required to establish that he was a minister (R. 30); that petitioner preached an average of seven hours per month (R. 30); that each member of the congregation, man, woman, and child, who completes the "ordination" discussion and water immersion and thereafter preaches is considered to be a minister (R. 31).

Petitioner's brother testified at the trial that he accompanied petitioner to the local board hearing;

that petitioner began to tell the board that he desired to present further evidence and to discuss the evidence; that the chairman said it would not do any good and that the board was set—if petitioner received any other classification he would have to go to higher authority; that petitioner was not permitted to present any further evidence; that the witness, upon protesting, was forbidden to speak further; that the board made derogatory comments concerning the witness, who had been in the penitentiary for selective service evasion, and concerning refusals of the Jehovah's witnesses to salute the flag; and that the board then terminated the interview (R. 36-37).

Petitioner confirmed much of the foregoing record (R. 39-44) and testified, in addition (among other things), that he moved to Kansas City in 1949 because he was not performing enough service as a minister (R. 40); that he began to attend public bible studies of the Jehovah's witnesses in 1941 (R. 40); that he underwent the "ordination ceremony" in 1947 at Los Angeles (R. 40); that he never performed a funeral or wedding ceremony but was qualified to do so (R. 41); and that he averaged 47 hours per month preaching and teaching from May 1949 to May 1950 (R. 43).

Petitioner further testified that the F.B.I. agent, in September 1950, called him from work at the wire factory and stated that he wanted to discuss his classification with him; that the discussion took place in the agent's car; that the agent stated that the classifications of minister and conscientious

objector conflicted and the appeal board could not give correct consideration to both, so that if petitioner desired the classification of minister the thing for him to do was to withdraw the other claim; that the agent wrote out the withdrawal and petitioner signed it (R. 42).

The trial judge instructed the jury that the question whether the board had observed due process and whether it had acted upon sufficient evidence was for the court (R. 47-48). Upon review of the evidence he concluded that the record would entitle the board to find that petitioner was not a minister under the definitions of the Act (R. 52-53), and that the board's comments and conduct had not deprived petitioner of a hearing (R. 53);[1] that no law precluded preliminary interviewing by an F.B.I. agent (R. 53-54); and that the only question for the jury was whether or not petitioner had refused to be inducted (R. 54-55).

ARGUMENT

Petitioner does not contend that his showing before the Selective Service boards was of such character as would have entitled him to the requested classification of minister or conscientious objector as a matter of law. He argues that the lack of hearing before the local board and the circumstances under which he signed the withdrawal of his claim to conscientious objector status were such

[1] The judge referred to notes of a board secretary, to the effect that at the hearing petitioner's brother did the talking, that the brother was asked to leave, and that petitioner left with him (R. 53, 64).

violations of due process as to render invalid the order to report for induction. Both complaints were first asserted, however, in the criminal prosecution after petitioner had refused to be inducted into the armed services, without having been presented within the administrative process where, if truly well founded, they could have been redressed. It is the Government's position that petitioner was required to avail himself of his administrative remedies if he was to attack the end result, and that he cannot attack the induction order in the criminal prosecution on the basis of allegations which he could have but did not assert in the administrative process. Cf. *Falbo* v. *United States*, 320 U.S. 549.

1. Petitioner misinterprets the decision below in arguing that the case involves the question of whether the denial of a hearing by a local board "is made immune to collateral attack" because of a classification by the appeal board (Pet. 2-3, 14-17), or the question whether his admission in his notice of appeal that he had given the local board his reasons for appearing before them constituted a "waiver" of his right to a personal appearance (Pet. 2-3, 18-19).

It is not here contended, nor was it held by the court below, that the mere fact of classification by an appeal board could cure the defect of failure to grant a requested hearing or validate an unfair hearing. Rather, it is the Government's view that there must be something in the administrative process which at least suggests that there is a claim that the hearing was inadequate.

The Selective Service regulations provide, clearly and properly, not only for specification by an appellant of additional or inadequately considered information, but—at the very outset—specification of "the matters in which he believes the local board erred" (*infra*, p. 23). The appeal board is then empowered and directed, as follows (*infra*, p. 23):

> *If any steps have been omitted by the local board,* if the record is incomplete, or if the information is not sufficient * * *, the appeal board shall return the file to the local board with a request for additional information *or action.* * * * [Italics supplied.] [2]

It is on petitioner's failure to utilize this administrative remedy, clearly available to him, that the decision below rests.

This remedy was availed of in the case so much relied on by petitioner, *Davis* v. *United States,* 199 F. 2d 689 (C.A. 6), and that fact clearly distinguishes that case from the present one. There, the registrant's notice of appeal to the appeal board (Gov. Ex. 1) recited the precise conduct of the local board members which was later the subject of defense in the criminal proceeding:

> I had prepared at least one-half hour's oral evidence, but after concluding the first sentence in a few seconds, the Acting Chairman stated," We cannot give you a minister's classi-

[2] This clearly answers petitioner's suggestion that "[t]he appeal board * * * merely classifies" and does not correct "errors of procedure" (Pet. 17-19).

> fication because you are also following some kind of secular employment." I responded that "I am primarily concerned this evening in asserting my claim as a conscientious objector. I filed my conscientious objector's form." The chairman responded, "You will have to file a letter with us for the Board of Appeal."

There is, accordingly, no such conflict of decisions as petitioner asserts.[3]

Petitioner's plea of lack of training in the law (Pet. 18) has no application to the facts of this case. His notice of appeal, which is a precise, ably drafted document of considerable length (R. 10-13), specifically recited the request for a hearing and reported that "At the hearing held May 23, 1950, I briefly stated my reasons for coming before them." At this point in the notice of appeal, if petitioner had truly been cut off at the hearing or even unduly rushed, it assuredly required no legal training or even any degree of mental acuity to

---

[3] In *Zieber* v. *United States*, 161 F. 2d 90 (C.A. 3), also relied upon by petitioner, the court did hold that, although the registrant had failed to take an appeal, the issue of whether the local board had failed to include further information offered at a personal appearance was a matter of defense which should have been determined by a jury, and accordingly remanded the cause for a new trial. But there were, in that case, instructions, which the court held to be erroneous, that the registrant was not justified in refusing to obey the order of induction if the local board had acted in good faith. In opposition to the registrant's petition for certiorari (O.T. 1947, No. 503), in which the registrant claimed the right to a dismissal rather than a remand, the Government noted that, since the registrant had failed to appeal to the appeal board, the remand order by the Court of Appeals was more favorable to the registrant than was required. Registrant's petition was denied by this Court, 333 U.S. 827.

add the very simple remark that the hearing was unfair or to mention at least one of the offending details as to which petitioner's memory was so vivid and clear in the criminal proceedings (R. 41-42). Having failed to complain then, before the classification process was complete, petitioner was not entitled to raise that issue as a defense for his refusal to obey the final induction order. The court, therefore, properly refused to give the instructions requested by petitioner (see Pet. 24-25) which would have allowed the jury to pass upon the conduct of the hearing as a defense to the criminal prosecution.

2. Similarly, with respect to the alleged misrepresentation by an F.B.I. agent which allegedly induced the withdrawal of the conscientious objector claim, the issue, at the time of the trial, was not whether the alleged misrepresentation had in fact occurred, but whether petitioner was in a position to rely upon such alleged misrepresentation as a legal justification for his refusal to obey the order to report.[4] There had been, up to the time of trial, no attempt within the Selective Service process to countermand the signed withdrawal in which petitioner not only withdrew his claim but stated "I am not a conscientious objector." And, so long as that withdrawal and that disclaimer were of record in the administrative proceeding, the Selective Service system was under no notice that petitioner was

[4] Since the facts with respect to the alleged misrepresentation were not the issue in the case, there was no necessity to submit that issue to the jury.

again claiming the status of conscientious objector. The language of *United States* v. *Rubinstein,* 166 F. 2d 249, 257-258 (C.A. 2), certiorari denied, 333 U.S. 868, is clearly applicable to the present enactment and situation:

> A local board, even though presented with evidence that a registrant was entitled to deferment, was not legally bound to defer him, if he made no claim for deferment. No public interest was served in deferring registrants who did not ask to be deferred. Conceivably Congress might have thought that it was necessary to the success of the war to protect those in whose interests deferment was possible; and had that been enacted deferment would not have been a personal privilege but a kind of duty. There is not the least ground so to construe the statute: the law expected all to serve who were fit and did not claim deferment. The boards were unfitted on their own initiative to learn whether registrants who were willing to serve, ought not to be allowed to do so.

As the court below noted (R. 74):

> * * * By making and delivering the declaration asserting that he was not within the conscientious objector exemption status, [petitioner] precluded any further administrative consideration of that claim so that [he] stood in the criminal case in the position of asserting to the court that he had misled the board into acting upon his own false statement in a matter peculiarly within his knowledge, but was ap-

pealing to the court to set aside the action he caused the board to take.

It should be noted that, at the time petitioner was classified, the conscientious objector classification of IV-E was, under Regulation 1623.2, *infra*, p. 21, lower in the scale than the ministerial classification of IV-D, with the result that, under regulation 1626.25, petitioner's status as a conscientious objector had to be determined before the Appeal Board would act definitively on his claim to ministerial classification.[5] Yet petitioner who, as noted above, showed considerable familiarity with Selective Service procedures, after he was first notified by the order to report for induction in November 1950 that his ministerial claim had been rejected, asked for further review by the State Director of Selective Service without stating that he was a conscientious objector.[6] He did not reassert his claim to be a conscientious objector until he was tried for violation of a new order to report for induction issued March 6, 1951. Petitioner was not justified in waiting until the criminal prosecution to reassert a claim which he knew he had not only withdrawn, but denied. Cf. *United States* v. *Man-*

[5] The local board had already classified him 1-A, and the appeal board had tentatively agreed, before petitioner withdrew, in September 1950, his claim to exemption as a conscientious objector. *Supra*, pp. 5-6.

[6] In the case of *Neal* v. *United States*, petition for a writ of certiorari pending, No. 791, the registrant did raise in the administrative process the claim that his withdrawal had been procured by misrepresentation. In that circumstance, the trial judge considered the issue of misrepresentation an issue of fact which, since jury trial had been waived, he was called upon to resolve.

savage, 178 F. 2d 812 (C.A. 7), certiorari denied, 339 U.S. 931.

The question does not have the general significance which petitioner would attach to it. On January 16, 1951, by Executive Order 10202, 16 Fed. Reg. 381, 384, Regulation 1623.2 was changed to place class IV-E above class IV-D, with the result that the ministerial classification would be determined by an appeal board before passing on the claim to conscientious objection. At about that time, F.B.I. agents were instructed not to endeavor to ascertain whether the applicant wished to withdraw one or another claim. Similarly, under the 1951 Act, the classification I-O for those claiming conscientious objection to combatant and non-combatant service is higher in the scale than the ministerial claim to IV-D (E.O. 10292, 16 F.R. 9853). Thus, the reason for the practice of ascertaining from persons claiming both ministerial and conscientious objection which claim was really desired —a practice which arose during the last war when many persons who originally asserted both claims would refuse to obey orders to report to civilian camps even if their conscientious objector status was recognized—no longer exists, and the practice has not been followed since January 1951.

CONCLUSION

The questions presented were correctly decided below and are, in addition, so intertwined with the particular facts of this case as to deprive them of general or future importance. No conflict of decisions or constitutional question is involved. It is

therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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JUNE 1953.

APPENDIX

Statutes and Regulations Involved

Universal Military Training and Service Act:

Section 6(g) [50 U.S.C. App., Supp. V, 456(g)]:

> Regular or duly ordained ministers of religion, as defined in this title * * * shall be exempt from training and service (but not from registration) under this title.

Section 6(j) [50 U.S.C. App., Supp. IV, 456 (j)]:

> Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. * * * Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, * * * if he is found to be conscientiously opposed to participation in * * * noncombatant service, be deferred. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good

faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall be deferred. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. * * *.

Section 12(a) [50 U.S.C. App., Supp. V, 462 (a)]:

> * * * any person * * * who * * * refuses * * * service in the armed forces * * * or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, * * * or directions made pursuant to this title, * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

Section 16(g) [50 U.S.C. App., Supp. V, 466 (g)]:

(1) The term "duly ordained minister of religion" means a person who has been ordained, in accordance with the ceremonial, ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

(2) The term "regular minister of religion" means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

(3) The term "regular or duly ordained minister of religion" does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the

principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect or organization.

The Selective Service Regulations promulgated by Executive Order 9088, 13 Fed. Reg. 4851, 14 Fed. Reg. 5021, 32 C.F.R. (1949 ed.) provided in pertinent part:

Section 1623.2:

Consideration of classes. Upon undertaking to classify any registrant * * * the registrant shall be classified in the lowest class for which he is determined to be eligible with Class I-A considered the highest class and class V-A considered the lowest class according to the following table:

I-A	IV-B
I-A-O	IV-C
I-D	IV-D
II-A	IV-E
II-C	IV-F
III-A	V-A
IV-A	

Section 1624.1:

Opportunity to appear in person. (a) Every registrant, after his classification is determined by the local board * * *, shall have an opportunity to appear in person before the member or members of the local board designated for the purpose * * *.

(b) No person other than a registrant shall have the right to appear in person before the local board, but the local board may, in its

discretion, permit any person to appear before it with or on behalf of a registrant * * *.

Section 1624.2:

Appearance before local board. (a) At the time and place fixed by the local board, the registrant may appear in person before the member or members of the local board designated for the purpose. The fact that he does appear shall be entered in the "Minutes of Actions of Local Board and Appeal Board" on the Classification Questionnaire (SSS Form No. 100).

(b) At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing, or, if oral, shall be summarized in writing and, in either event, shall be placed in the registrant's file. The information furnished should be as concise as possible under the circumstances. The member or members of the local board before whom the registrant appears may impose such limitations upon the time which the registrant may have for his appearance as they deem necessary.

(c) After the registrant has appeared before the member or members of the local

board designated for the purpose, the local board shall consider the new information which it receives and shall again classify the registrant in the same manner as if he had never before been classified.

Section 1626.12:

Statement of person appealing. The person appealing may attach to his appeal a statement specifying the matters in which he believes the local board erred, may direct attention to any information in the registrant's file which he believes the local board has failed to consider or to give sufficient weight, and may set out in full any information which was offered to the local board and which the local board failed or refused to include in the registrant's file.

Section 1626.23:

Preliminary review. The appeal board will carefully check each file to determine whether all steps required by the regulations have been taken, whether the record is complete, and whether the information in the file is sufficient to enable it to determine the registrant's classification. If any steps have been omitted by the local board, if the record is incomplete, or if the information is not sufficient to enable the appeal board to determine the classification of the registrant, the appeal board shall return the file to the local board with a request for additional information or action. * * *

Section 1626.25:

Special provisions when appeal involves

claim that registrant is a conscientious objector. (a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action:

* * * * *

(4) If the appeal board determines that such registrant is not entitled to classification in either a class lower than Class IV-E or in Class IV-E, it shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

* * * * *

(c) The Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board * * * that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall be deferred in Class IV-E. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to

the appeal board that such objections be not sustained.

(d) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice.

* * *.

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